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EXAMINER

JUSKA, C

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 11/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/800,221

Applicant(s)

Alboom et al.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-21 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 20) ☐ Other:

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## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 3 and 4 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 2 of prior U.S. Patent No. 6,247,215 B1. This is a double patenting rejection.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Independent claim 24 limits the step of washing greige goods to "washing

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uncompressed greige goods.” The term “uncompressed” is deemed new matter in that the specification does not clearly teach the greige goods are in an uncompressed state during washing. At page 6, lines 17-20, the specification states, “After the greige good fabrics are formed into the tubes, they are loaded into a jet-dyeing machine for further processing. The machine should be fully loaded. Alternatively, a Beck dyeing machine may be used, or even a continuous washing range.” Thus, the disclosure is silent with respect to an explicit teaching of washing in an “uncompressed” state of the fabric.

MPEP 2173.05(i) states the following:

Any negative limitation or exclusionary proviso must have basis in the original disclosure. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement.

Therefore, claim 21 is rejected under 112, 1st paragraph.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term “uncompressed” is indefinite because the scope of term is unclear. Does “uncompressed” mean not squeezed, not reduced in size or volume, not flattened laterally, or not subjected to any external force? The specification does not clearly define said term.

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***Response to Arguments***

7. Applicant's arguments filed in the Preliminary Remarks have been fully considered but they are not persuasive. Applicant's asserts that the "uncompressed" is not new matter in that the "disclosed washing procedures inherently involve washing the fabrics in an essentially uncompressed state" (Preliminary Remarks, page 2, lines 11-12). The Examiner respectfully disagrees. Specifically, it is noted that both Beck and jet-dyeing machines inherently include rope dyeing (washing) of fabric, wherein said fabric rope is folded upon itself in a cross-direction to form said rope and also folded upon itself repeatedly in a machine direction. (See definitions and figures on pages 13-14 and 84 of *Dictionary of Fiber & Textile Technology*.) Thus, it is asserted that the disclosed washing processes do not inherently include the "uncompressed" feature, in that, in the broadest sense of the word, the fabric is inherently compressed (i.e., reduced in size or volume or flattened laterally by the compressive forces of the fluid bath acting on the fabric surface and the fabric mass acting on said fabric folded upon itself. Additionally, it is argued that the flock of said fabric is inherently subject to compressive forces as an intended result of the invention. In other words, the flock is inherently flattened somewhat to produce the claimed random groups of varying orientation. Therefore, Applicant's arguments are found unpersuasive.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 5, 6, 9, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,922,404 issued to Priester, Jr., in view of US 4,895,748 issued to Squires.

Priester discloses a randomly oriented flocked pile fabric produced by a process comprising (a) forming a flocked fabric, (b) dyeing in an aqueous dyebath or wetting out said fabric without dye in a beck or other dyeing machine, (c) removing said wetting fabric from said dyeing machine, (d) forming said wetted fabric into a crumpled ball-shaped mass, (e) squeezing excess liquid from the mass, and (f) drying said fabric (abstract, col. 4, line 57-col. 5, line 4). Priester's drying step, wherein the fabric is dried by hot air, would inherently meet Applicant's limitation of "heat setting." Thus, Priester teaches the limitations of claims 1, 2, 5, 6, 9, 14, and 17 with the exception that the fabric is printed after drying.

Printing of flocked fabrics, even textured flock fabrics, are well-known in the art. For example, Squires teaches a method of printing a textured flock fabric (abstract). Additionally, Priester does not preclude the printing of the fabric, and even teaches certain utilities wherein a printed pattern would be desirable, such as upholstery covers, clothing, bedspreads, wall coverings, etc. (col. 7, lines 15-50). Hence, it would have been obvious to one skilled in the art to print the Priester fabric in order to produce a fabric with a desired aesthetic look for a specific end

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use. Therefore, claims 1, 2, 5, 6, 9, 14, and 17 are rejected as being obvious over the cited Priester and Squires patents.

10. Claims 7, 8, 15, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Priester and Squires patents.

With respect to claims 7, 8, 15, 16, and 20, which limit the fabric to being in tubular form during the washing step and then opened from said tubular form before drying, it is argued that said limitations are inherent to the disclosure of Priester. Priester employs a beck dyeing machine, or the like, to wash the fabric. Beck dyeing machines, as well as other conventional dyeing machines such as jet-dyeing machines, employ fabric ropes. (See the figures in the Dictionary of Fiber & Textile Technology.) Fabric ropes are made by basting fabric ends together to form a continuous loop or tubular form. (See the definition of jet-dyeing in the *Dictionary of Fiber & Textile Technology*.) After removing said fabric from the dyeing machine, the basting stitches are conventionally removed, thus forming a flat fabric again. Therefore, claims 7, 8, 15, 16, and 20 are rejected as being obvious over the cited prior art.

11. Claims 10-12, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Priester and Squires patents.

With respect to claims 10-12 which limit the wash bath to contain a non-ionic wash agent, a fabric softener, and a desizing agent, it is held that these limitations are obvious to one skilled in the art. Applicant is hereby given Official Notice that greige goods are conventionally washed as part of the finishing process. Specifically, the greige fabrics are washed with detergents and/or

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surfactants, such as non-ionic, anionic, and cationic compositions. The greige fabrics are also desized to remove any size applied to the fibers and yarns during manufacture of said fabric. Additionally, fabric softeners are conventionally added to enhance the hand of said fabric. Therefore, it is held that the limitations of claims 10-12 would have been obvious to one of ordinary skill in the art, since said limitations encompass conventional finishing process of all greige goods which clean the fabric and enhance the hand or feel of said fabric.

With respect to claims 18 and 19, which cite liquor ratios, it is held that said claims are also obvious over the prior art. One of ordinary skill in the art is well aware of the results of varying liquor ratios (i.e., weight of wash/dyebath to fabric which determines the concentration of said dyebath and thus, the amount of treatment for said fabric). Thus, discovering the optimum liquor ratio involves only routine skill in the art. Therefore, claims 18 and 19 are rejected as being obvious over the cited art. *In re Boesch*, 205 USPQ 215.

#### ***Allowable Subject Matter***

12. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 13 is dependent upon claim 4, which contains allowable subject matter, as was indicated in the parent application, now US 6,247,215. (Note the double patenting rejection above.) Therefore, claim 13 is considered to contain allowable subject matter.



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***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.



CHERYL A. JUSKA  
PRIMARY EXAMINER

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November 4, 2001